



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Parts 100 and 165**

**[Docket Number USCG-2019-0908]**

**RIN 1625-AA08**

### **Special Local Regulation; Temporary Change for Recurring Marine Event in the Seventh Coast Guard District**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is temporarily changing the enforcement period of a special local regulation for a recurring marine event in the Seventh Coast Guard District and adding a temporary safety zone for this event. These regulations apply to the St. Croix Christmas Boat Parade and Fireworks Display in the vicinity of Protestant Cay in St. Croix, USVI, which will take place this year on December 14, 2019. The temporary special local regulation and temporary safety zone is needed to protect personnel, vessels, and the marine environment from the boat parade and fireworks display. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port San Juan.

**DATES:** This rule is effective on December 14, 2019, from 4 p.m. until 11 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0908 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2374, email Pedro.L.Mendoza@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the marine event from involved parties with sufficient time to publish a NPRM and to receive public comments prior to the event. It is impracticable to publish an NPRM because the Coast Guard did not receive notice of the alternate date of the boat parade and the addition of a fireworks display until October 31, 2019, and the special local regulation is needed for December 14, 2019. This action is necessary for the protection of life and property on the navigable waters of the

United States. Therefore, it would be contrary to the public interest to postpone temporarily amending this special local regulation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety and security concerns associated with power boat races.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 70041. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the boat parade and fireworks display on December 14, 2019, will be a safety concern for anyone within the vicinity of the event. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters of Christiansted Harbor in the vicinity of Protestant Cay in St. Croix, USVI.

### **IV. Discussion of the Rule**

This rule temporarily changes the date of the Christmas Boat Parade in St. Croix, USVI and adds a fireworks display to the event description. The special local regulation is from 4:00 p.m. until 11:00 p.m. on December 14, 2019. The temporary special local regulation will cover all navigable waters of Christiansted Harbor approximately 200 yards from Protestant Cay. During the fireworks display, an exclusion zone of 700 feet will be established around the deck barges at approximate position 17°45'3" N, 064°42'10"W. The duration of the temporary special local regulation is intended to protect personnel, vessels, and the marine environment in these navigable waters during the boat parade and fireworks display. No vessel or person, other than

the event participants, will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the expected size, location and available exceptions to the enforcement of the special local regulation and safety zone. The regulated area will impact a small designated area of Christiansted Harbor in the vicinity of Protestant Cay in St. Croix, USVI during the event for seven hours on December 14, 2019 and thus is limited in time and scope. Although persons and vessels who are not participating in the event will not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period. Furthermore, the rule will allow vessels to seek permission to enter the regulated area. Persons and vessels may still enter, transit through, anchor

in, or remain within the regulated during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative. The Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the regulated area.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only seven hours that will prohibit entry within the regulated area during the boat parade and fireworks display. It is categorically excluded from further review under paragraphs L60(a) and L61 in Table 3-1 of the Department of Homeland Security Directive 023-01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

**PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T799-0908 to read as follows:

**§ 100.T799-0908 Special Local Regulation; Christmas Boat Parade, Christiansted Harbor, St. Croix, USVI.**

(a) Location. The following area is a special local regulation. Christiansted Harbor, 200 yards off-shore surrounding Protestant Cay, St. Croix, USVI, from surface to bottom, beginning in position 17°45'3" N, 064°42'10"W, around the cay and back to the beginning position. During the fireworks display an exclusion zone of 700 feet is established around the deck barges at approximate position 17°45'3" N, 064°42'10"W. All coordinates are North American Datum 1983.

(b) Definitions. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) Regulations. (1) Except for those persons and vessels participating in boat parade or enforcing the special local regulation, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area.

- (2) Persons and vessels may request authorization to enter, transit through, anchor in,



remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the Captain of the Port or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives.

(d) Enforcement period. This section will be enforced from 4 p.m. until 11 p.m. on December 14, 2019.

## **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

3. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

4. Add § 165.T07-0908 to read as follows:

### **§ 165.T07-0908 Safety Zone; Christmas Boat Parade Fireworks Display, Christiansted Harbor, St. Croix, USVI.**

(a) Location. A safety zone is established approximately 700 feet around the deck barges at approximate position 17°45'3" N, 064°42'10"W. All coordinates are North American Datum 1983.

(b) Definitions. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) Regulations. (1) Except for those persons and vessels participating in boat parade or

enforcing the special local regulation, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, remain within the regulated area by contacting the Captain of the Port San Juan by telephone at (787) 289-2041, or a designated representative via VHF radio on channel 16. Those in the regulated area must comply with all lawful orders or directions given to them by the Captain of the Port or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives.

(d) Enforcement period. This section will be enforced from 4 p.m. until 11 p.m. on December 14, 2019.

Dated: December 5, 2019.

E. P. King,  
Captain, U.S. Coast Guard,  
Captain of the Port San Juan

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